

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

PART 8

GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

700.2801 Effect of divorce, annulment, decree of separation, bigamy, and absence.

Sec. 2801. (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of parts 1 to 4 of this article and of section 3203, a surviving spouse does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual.

(c) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

(d) An individual who, at the time of the decedent's death, is living in a bigamous relationship with another individual.

(e) An individual who did any of the following for 1 year or more before the death of the deceased person:

(i) Was willfully absent from the decedent spouse.

(ii) Deserted the decedent spouse.

(iii) Willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2802 Definitions relating to effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.

Sec. 2802. As used in this section and sections 2803 and 2804:

(a) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable" means, with respect to a disposition, appointment, provision, or nomination, one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate himself or herself in place of his or her killer and whether or not the decedent then had the capacity to exercise the power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2803 Forfeiture and revocation of benefits.

Sec. 2803. (1) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, a family allowance, and exempt property. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his or her intestate share.

(2) The felonious and intentional killing of the decedent does all of the following:

(a) Revokes all of the following that are revocable:

(i) Disposition or appointment of property made by the decedent to the killer in a governing instrument.

(ii) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer.

(iii) Nomination of the killer in a governing instrument, nominating or appointing the killer to serve in a fiduciary or representative capacity, including a personal representative, executor, trustee, or agent.

(b) Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in

common.

(3) A severance under subsection (2)(b) does not affect a third party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving that type of property, as evidence of ownership.

(4) A provision of a governing instrument is given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(5) A killer's wrongful acquisition of property or interest not covered by this section shall be treated in accordance with the principle that a killer cannot profit from his or her wrong.

(6) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2804 Protection of payors and other third parties.

Sec. 2804. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken another action in reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death. A payor or other third party is liable for a payment made or other action taken 3 or more business days after the payor or other third party actually receives written notice of a claimed forfeiture or revocation under section 2803. A payor or other third party is not obligated to determine whether the decedent was the victim of felonious killing or to seek evidence relating to such a killing even if the circumstances of the decedent's death are suspicious as to the beneficiary's participation in such a killing. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of a claimed forfeiture or revocation under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that a claim of forfeiture or revocation is being made under section 2803. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from a claim for the value of an amount paid to the county treasurer.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2803, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2805 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2805. (1) Section 2803 does not obligate a person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit, and such a person is not liable under section 2803 for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, an item of property, or another benefit to which the person is not entitled under section 2803 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under section 2803.

(2) If this section and sections 2803 and 2804 are, or a part of those sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a person who, not for value, receives the payment, item of property, or another benefit to which the person is not entitled under these sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of the property or benefit, to the person who would have been entitled to it if these sections or a part of these sections were not preempted.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2806 Definitions relating to revocation of probate and nonprobate transfers by divorce; revocation by other changes of circumstances.

Sec. 2806. As used in this section and sections 2807 to 2809:

(a) "Disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section and sections 2807 to 2809.

(c) "Divorced individual" includes, but is not limited to, an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by a divorced individual before the divorce from, or annulment of his or her marriage to, his or her former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable" means, with respect to a disposition, appointment, provision, or nomination, one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2807 Revocation upon divorce; revocation by other changes of circumstances.

Sec. 2807. (1) Except as provided by the express terms of a governing instrument, court order, or contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage does all of the following:

(a) Revokes all of the following that are revocable:

(i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and a disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse.

(ii) A provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse.

(iii) A nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in a fiduciary or representative capacity, including, but not limited to, a personal representative, executor, trustee, conservator, agent, or guardian.

(b) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into

tenancies in common.

(2) A severance under subsection (1)(b) does not affect a third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving that type of property, as evidence of ownership.

(3) Each provision of a governing instrument is given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(4) Each provision revoked solely by this section is revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(5) No change of circumstances other than as described in this section and in sections 2803 to 2805, 2808, and 2809 causes a revocation.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2808 Protection of payors and other third parties.

Sec. 2808. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken another action in reliance on the validity of the governing instrument. A payor or other third party is liable for a payment made or other action taken 3 or more business days after the payor or other third party actually receives written notice of a claimed revocation or severance under section 2807. A payor or other third party is not obligated to inquire as to the continued marital relationship between the decedent and a beneficiary described in this subsection or to seek evidence about such a relationship. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

(2) Written notice of the divorce, annulment, or remarriage under subsection (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of a payor or other third party does not constitute notice to the payor or other third party.

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, and a statement that a divorce, annulment, or remarriage of the decedent and the designated individual occurred. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from a claim for the value of an amount paid to the county treasurer.

(5) The county treasurer shall not charge a filing fee for a payment to the county treasurer under this section. The county treasurer shall hold the money in accordance with section 3917 and, upon the court's determination under section 2807, shall disburse the money in accordance with the determination.

(6) The provision for payment to the county treasurer under this section does not preclude a payor or other third party from taking another action authorized by law or the governing instrument.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.2809 Protection of bona fide purchasers; personal liability of recipient.

Sec. 2809. (1) Section 2807 does not obligate an individual who purchases property from a former spouse, a relative of a former spouse, or another person for value and without notice, or who receives from a former spouse, a relative of a former spouse, or another person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, to return the payment, item of property, or benefit, and such a person is not liable under section 2807 for the amount of the payment or the value of the item of property or

benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or another benefit to which that person is not entitled under section 2807 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under section 2807.

(2) If this section and sections 2807 and 2808 are, or a part of 1 of those sections is, preempted by federal law with respect to a payment, an item of property, or another benefit covered by these sections, a former spouse, relative of the former spouse, or another person who, not for value, receives a payment, an item of property, or another benefit to which that person is not entitled under these sections is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it if these sections or a part of 1 of these sections were not preempted.

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